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Review Application No.51 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.04.2023
PRONOUNCED ON : 25.05.2023

THE HONOURABLE MR. S.VAIDYANATHAN,
ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

REVIEW APPLICATION No.51 OF 2022

P.Dhanasekaran

... Review Petitioner

vs.

1. The University of Madras,
represented by its Registrar,
Chennai 600 005.
2. Dr.S.Bhaskaran,
Technical Officer,
Madras University Library,
Chennai.
3. V.Kalaiappan,
Technical Officer,
Guindy Campus,
University of Madras,
Chennai.
4. University Grants Commission,
rep. by its Chairman,
Bahadur Shah Zafar Marg,
New Delhi – 110 002.

... Respondents

Review Application filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure seeking to review the order dated 23.12.2021 passed by this Court in W.A.No.2271 of 2018.



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For Review Petitioner : Mr. A.E. Chelliah,
Senior Counsel
for Mr.R.Prathaban

For 1st Respondent : Mr.A.S.Vijayaraghavan

For 3rd Respondent : Mr.M.Ganesh

For 4th Respondent : Mr.P.R.Gopinathan

ORDER

S.VAIDYANATHAN,A.C.,J.

This Review Application is filed seeking to review the judgment dated 23.12.2021 made in W.A.No.2271 of 2018 insofar as the Petitioner herein viz. P. Dhanasekaran alone is concerned. Relevant portion of the judgment passed in the said Writ Appeal reads thus:

“16. this Writ Appeal is allowed and the order of the learned Single Judge dated 23.10.2017 made in W.P.No.8610 of 2017 is hereby set aside. For the sake of repetition, it is made clear that the Writ Petitioner, R2 and R3 are not entitled to promotion to the post of Assistant Librarian, unless they succeed to such status in the manner prescribed by the UGC. Since the University of Madras has not clandestinely filed any Appeal, this Court cannot pass any specific order against M.Veerapandi and Selvi regarding their dis-entitlement to the post of Assistant Librarian and it is for the University to decide with regard to filing of an Appeal and bringing of this judgment to the notice of the Court hearing the Appeal. ...”



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2. In the Writ Appeal, learned Senior Counsel who appeared for P.Dhanasekaran represented that the Writ Petitioner viz. Dr.S.Bhaskaran was not qualified in 2012 and every time, he was blocking the promotion of others. Dhanasekaran and one V.Kalaiappan, the third respondent in the Writ Appeal, had come out successful in the NET examination as early as in 2004 and 1999, respectively, whereas, the Writ Petitioner cleared his NET examination only in 2012. It was further argued by the learned Senior Counsel that Dhanasekaran is senior to the Writ Petitioner and that he (Dhanasekaran) acquired the necessary qualification for promotion much prior to the Writ Petitioner.

3. When this Review Application was taken up for hearing, learned Senior Counsel for the Review Petitioner/Dhanasekaran brought to the attention of this Court that some of the persons, who did not possess the requisite qualification, have been appointed as Assistant Librarian. Be that as it may, since that is not the issue at hand, we are not going to deal with the same.

4. Admittedly, even though Dhanasekaran had the requisite qualification, he was not appointed to the post of Assistant Librarian, which is not a promotional post, but, a post which has to be filled up only



by way of direct recruitment. If the Review Petitioner wants to be appointed as Assistant Librarian, he has to compete based on the advertisement and get selected to the said post and on the contrary, the service rendered by him in the earlier post cannot be reckoned. When a minimum qualification is prescribed for the post of Assistant Librarian and the said post has got to be filled up only by way of direct recruitment, the Madras University, which is coming under the control of the UGC, is duty bound to adhere to the UGC Act and Regulations.

5. At this juncture, it is worth pointing out that this Bench, while dealing with the Writ Appeal, has categorically held that Dhanasekaran is not entitled to any benefit.

6. The learned counsel for the Madras University submitted that the contention of the Review Petitioner that Veerapandi and Selvi, who are similarly placed to the Review Petitioner, have been promoted as Assistant Librarian, is not correct. It is his contention that the aforesaid Veerapandi and Selvi have not been properly selected by due process of law, notwithstanding the judgment dated 12.10.2009 passed by this Court in W.A.No.1126 of 2006. It is his further contention that though this Court has made an observation in the aforesaid judgment that some of the Respondents who had acquired necessary qualification and were promoted



as Assistant Librarian need not be disturbed, Selvi and Veerapandi were not at all promoted.

7. Heard both sides and perused the material documents available on record.

8. It is to be pointed out that technical officers cannot be brought to the teaching side as per the UGC guidelines. Though a person may possess the required qualification, when the post of Assistant Librarian is to be filled up only by way of direct recruitment, the post of Assistant Librarian cannot be filled up by promoting a person from a lower cadre, when there is no feeder category at all.

9. It is an axiomatic principle in law that rehearing of matter on merits and re-appreciation of the arguments / pleas raised by the litigants in the original order is certainly impermissible under review. It is to be remembered that review cannot be heard as an appeal, even if the order is an erroneous one. The ambit of review of an order passed in writ jurisdiction is very limited. That apart, for correcting an erroneous decision, 'Review' does not lie.

10. It is well settled that the scope of review is very minimal, as held by a Division Bench of this Court in the case of the **Special Officer, Kallal Co-operative Primary Agricultural and Rural Development**



Bank Ltd., Karaikudi, Sivagangai District vs. R.M.Rajarithnam

[Review Application (MD)No.82 of 2013] decided on 04.02.2015.

Relevant portion of the said decision is extracted hereunder:

"10. From the records, it is seen that the review applicant did not contest the claim of the first respondent on merits in the writ petition. On the other hand, the learned counsel for the review applicant admitted the contentions of the first respondent. Based on the said admission only, an order was passed in the writ petition. The review application and the writ appeal filed by the review applicant herein were dismissed as not maintainable. W.A.(MD) No.502 of 2009 filed against the order dated 26.07.2007 passed in W.P.(MD) No.4636 of 2004, was dismissed by a Division Bench of this Court, holding that the review applicant is not entitled to agitate the issue on merits. ***It is well settled that the scope of review is very limited. The review applicant cannot re-argue and he is not entitled for re-hearing on merits.***

11. The scope of review was considered by the Hon'ble Apex Court in a judgment reported in 2000 (6) SCC 224 [Lilli Thomas and Others Vs. Union of India and Others], wherein, in paragraph 52, it was held as under:

"52.The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi Vs. Pradyumansinghji Arjunsinghji [1971 (3) SCC 844 : AIR 1970 SC 1273] held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or



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procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error."

(emphasis supplied)

12. A Division Bench of this Court in a judgment reported in 2014 (3) TLNJ 245 (Civil) [M.Jai Kavitha Vs. The Authorised Officer, Syndicate Bank, Regional Office, Chennai - 1 and others], in which, one of us [V.DHANAPALAN, J.] is a party, has considered the scope of judicial review, wherein the decision of the Honourable Apex Court was noted with approval. Paragraph No.9 of the said Judgment reads as under:

"9.The power of review under Order 47 Rule 1 of CPC can be exercised by a court of law, if the order in question comprises a mistake or an error apparent on the face of record. Once an order is pronounced, it should not be altered, unless there is an apparent error. Law is well settled that erroneous finding is not a ground for review, so also improper consideration for that matter. In review application, the court does not sit in appeal over its own judgment and the said application cannot be treated as an appeal. This position has been ruled by the Supreme Court in Lily Thomas Vs. Union of India [2000 (6) SCC 224]. Therefore, in the absence of any error apparent on the face of record, we are not inclined to interfere with the order in question, except to the extent of deleting of the portions in paragraphs 14 and 15 of the impugned order, with which the applicant is concerned as to having an impact on the proceedings pending before the tribunal, as stated in the foregoing paragraph." (emphasis supplied)



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11. Yet another Division Bench of this Court in the case of **B.Dhanalakshmi vs M. Shajahan** reported in **AIR 2004 Madras 512**, has opined that the power of review is not an appeal in disguise. Relevant paragraphs of the said decision are as under:

"11. From the above judgments, it is seen that the law is well settled inasmuch as the power of review is available only when there is an error apparent on the face of the record and not on erroneous decision. If the parties aggrieved by the judgment on the ground that it is erroneous, remedy is only questioning the said order in appeal. The power of review under Order 47 Rule 1 C.P.C. may be opened inter alia only if there is a mistake or an error apparent on the face of the record. The said power cannot be exercised as is not permissible for an erroneous decision to be "reheard and corrected". A review application also cannot be allowed to be "an appeal in disguise". Similarly, the error apparent on the face of the record must be such an error, which must strikes one on mere looking at record and would not require any long drawn process of reasoning on points, where there may conceivably be two opinions.

12. Based on the above principle of law, we are not inclined to accede to the contention of the review applicants insofar as the relief of review by placing reliance on the time taken by the appellants from the date of return of the copy application and the date of filing the writ petition. Though the learned counsel for the review applicants Mr. R. Natesan and Mrs. Radha Gopalan may be correct in contending that while computing the period of limitation each day delay should be explained. The period taken by the appellants to file writ petitions also may have bearing in computing



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the period as the objectors cannot be allowed to take their own time to file writ petition. However, for the reasons as to our limited power of exercise of review our order in setting aside the grant on the ground that the revision petitions were maintainable, we are not inclined to review our order by adding the number of days taken by the writ appellants for filing the writ petitions after the copy application was received. As in that event, our order would be completely reversed."

12. Furthermore, this Court, in **R.Mohala vs. M.Siva and others** [Review Petition No.61 of 2018 and WMP No. 10818 and 10819 of 2018] decided on 25.04.2018, has elaborately discussed the scope of reviewing the order passed in the Writ Petition, by holding as under:

"5. In the Writ petition, the contentions of the learned counsel for the parties were heard in detail and a detailed order has been passed to demolish the violated portions caused by the Review Petitioner / 7th Respondent within a time frame. Even though the Review Petitioner drew the attention of this Court to the provisions of Sections 197 to 203 of Tamilnadu District Municipalities Act, 1920 and contended that it does not fall under any of the said provisions, this Court has taken note of the entire facts and passed final orders and the Supreme Court has come down heavily with regard to encroachment matters. That apart, there is no ground to review this order.

6. To maintain a review application, the review petitioner must satisfy the three requirements of Order 47 Rule 1 of C.P.C., which are as under:

(i) From discovery of new and important matter



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or evidence which after exercise of due diligence was not within his knowledge (or) could not be produced by him at the time when the decree was passed (or) order made;

(ii) There is some mistake (or) error apparent on the face of the record in the judgment under review; and

(iii) or any other sufficient reasons.

7. The basic principle to entertain the review under Order 47 Rule 1 C.P.C. is to correct the errors but not to substitute a view. The judgment under review cannot be reversed (or) altered taking away the rights declared and conferred by the Court under the said judgment; once a judgment is rendered, the Court becomes functus officio and it cannot set aside its judgment or the decree; no inherent powers of review were conferred on the Court; the review Court cannot look into the trial Court judgment; it can look into its own judgment for limited purpose to correct any error or mistake in the judgment pointed out by the review petitioner without altering or substituting its view in the judgment under review; the review court cannot entertain the arguments touching the merits and demerits of the case and cannot take a different view disturbing the finality of the judgment; the review cannot be treated as appeal in disguise, as the object behind review is ultimately to see that there should not be miscarriage of justice and shall do justice for the sake of justice only and review on the ground that the judgment is erroneous cannot be sustained.

8. It is settled law that even an erroneous decision cannot be a ground for the Court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order under review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed.



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9. In “*Shanmuga Sundara Nadar vs. Tamil Nadu Housing Board, rep. by its Chairman, Madras and others*”, reported in 1988 (2) L.W. 57 (MAD.), this Court held as under:

"The power to review is a restricted power which authorises the Court to look through the judgment not in order to substitute a fresh or second judgment but in order to correct it or improve it, because some material which it ought to have considered has escaped consideration or failed to be placed before it for any other reason or because it suffers from a patent error which cannot be sustained by any process of reasoning. The Court cannot under cover of review arrogate to itself the power to decide the case over again because it feels then that the assessment of evidence, etc., done formerly was faulty or even incorrect. An erroneous view of evidence of law is not a ground for review. A wrong exposition of the law, a wrong application of the law and failure to apply the correct law have been held to be not a ground for review."

10. In “*Meera Bhanja vs. Nirmala Kumari Choudhury*” reported in (1995) 1 SCC 170, the Supreme Court, while considering the scope of the power of review of the High Court under Order 47, Rule 1, C.P.C., held as under:

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C. The review petition of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers on court under Order 47, Rule 1, C.P.C. is similar to jurisdiction available to the High Court while seeking review of the orders under Article 226."

11. Having regard to the above, this Court does not



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find any error apparent on the face of the order in order to entertain the present review application.

Accordingly, this Review Petition is dismissed.
Consequently, connected miscellaneous petitions are closed.

13. In the case of **Parsion Devi vs. Sumitri Devi**, reported in **1997 (8) SCC 715**, the Hon'ble Apex Court has reiterated the position with regard to review of an order, as follows:

"Under Order 47, Rule 1, CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1, CPC, it is not permissible for an erroneous decision to be "reheard and corrected". **A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."**

14. There is no second opinion of a prime fact that the 'Power of Review' is a creation of a statute. A mere fact that divergent/different views on the same subject are quite plausible/possible, is not a ground to review the earlier order passed by a Court of Law. To put it precisely, the 'Power of Review' is not to be exercised for substituting the earlier views arrived at by the concerned Competent Court. An erroneous decision can be subject



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to an appeal to a higher forum. But, a review is impermissible on the ground that the Court of Law proceeded on a wrong proposition of law.

Generally speaking, an error apparent on the face of record means that an error must be quite obvious and self-evident and in short, it does require an elaborate argument to be established, as per decision of the Hon'ble Supreme Court in the case of **Thungabhadra Industries Limited vs. The Government of A.P.**, reported in **1964 AIR 1372**.

15. In view of the upshot of aforesaid qualitative and quantitative discussions and having regard to the facts and circumstances of the present case, this Court finds no apparent error on the face of the judgment dated 23.12.2021 passed by this Court in W.A.No.2271 of 2018, as the Review Petitioner has failed to satisfy the three ingredients of Order 47 Rule 1 of C.P.C., necessitating review of the order so passed.

In fine, this Review Application is dismissed. Consequently, connected C.M.P.No.4113 of 2022 is closed.

(S.V.N., A.C.J.) (A.A.N.,J.)
25.05.2023

Index : Yes/No
Speaking Order : Yes/No
(aeb)



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**S.VAIDYANATHAN, A.C.J.,
AND
A.A.NAKKIRAN,J.**

(aeb)

Pre-delivery order in

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25.05.2023